

APR 2005

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
BCR-10102/29

Re Application Of: Herrmann

| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|-----------------|---------------|------------|--------------|----------------|------------------|
| 10/748,910 | Dec. 22, 2003 | A. Jackson | 25006 | 3677 | 8376 |

Invention: CUSHION GRIPS FOR SPRAY BOTTLES

COMMISSIONER FOR PATENTS:

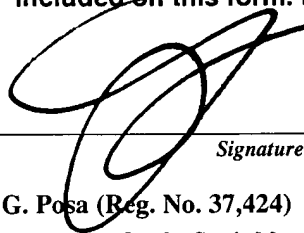
Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is:

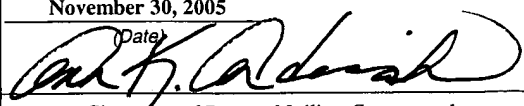
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- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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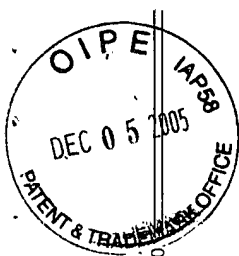

Signature

Dated: November 30, 2005

John G. Posa (Reg. No. 37,424)
Gifford, Krass, Groh, Sprinkle, Anderson
& Citkowski, P.C.
P.O. Box 7021
Troy, Michigan 48007-7021
(734) 913-9300 (tele)
(734) 913-6007 (fax)

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| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on November 30, 2005 | |
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| Signature of Person Mailing Correspondence | |
| Ann K. Andrusiak | |
| Typed or Printed Name of Person Mailing Correspondence | |

cc:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Herrmann

Serial No.: 10/748,910

Group No.: 3677

Filed: Dec. 22, 2003

Examiner: A. Jackson

For: CUSHION GRIPS FOR SPRAY BOTTLES

APPELLANTS' BRIEF UNDER 37 CFR §1.192

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is Thomas Herrmann, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 15 claims. Claims 1-15 are pending, rejected and under appeal. Claim 1 is the sole independent claim.

IV. Status of Amendments Filed Subsequent to Final Rejection

No after-final amendments have been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 resides in a spray bottle having a manually operated, elongated trigger-type

grip, a cover for the grip, comprising a sleeve of pliable material having an open end, a closed end, an internal length, an internal cross-sectional dimension and a wall thickness; and wherein the length is on the order 2.5 cm or less; the internal cross-sectional dimension is on the order of 1 cm or less; and the wall thickness, including the closed end, is substantially consistent. (Specification, page 1, lines 13-19).

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

1. The rejection of all claims, 1-15, under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,182,334 to Davancens in view of U.S. Patent No. 2,704,961 to Weil.

VII. Argument

A. Claims 1, 2, 5 and 6 wherein claims 2, 5 and 6 stands or falls with claim 1.

Claim 1 includes the limitation of a sleeve of pliable material having a closed end, and wherein the wall thickness of the sleeve, *including the closed end*, is substantially consistent. The Examiner appears to disregard these and other limitations, stating only that Davancens discloses a "closed end of a dimension." While, arguably, the end of the device of Davancens is "closed," it certainly does not have a consistent wall thickness. Indeed, Davancens teaches away from a consistent wall thickness, since a point of novelty is an extension in the form of a base 32 which allows a cord to be retained or passed therethrough. Weil, on the other hand, does not include a closed end, and there is no teaching or suggestion from the prior art to combine these references, as they are independent and non-overlapping solutions to the same problem. Accordingly, the *prima facie* obviousness has not been established.

B. Claim 3.

Claim 3 adds to claim 1 the limitation of an internal cross-section which is rectangular. Neither Davancens nor Weil includes a rectangular cross-section, and the Examiner fails to mention claim 3 in the Office Actions. Accordingly, this claim is allowable.

C. Claim 4.

Claim 4 adds to claim 1 that the sleeve of pliable material is composed of a co-extensive liner and overlay. The Examiner claims that Davancens discloses an overlay (30) with an internal core or liner (38). The Board will note in Figure 3 of Davancens that what the Examiner is calling a "liner" is,

in fact, just a cavity into the fastener of Davancens. There is no teaching in the prior art of a co-extensive liner and overlay. *Prima facie* obviousness has not been established.

D. **Claim 7.**

Claim 7 adds to claim 1 certain length and internal cross-sectional measurements. The Examiner rejects claim 7 using *In Re Boesch*, which does not apply in this case. Appellant in this case is positively reciting certain measurements, and has not discovered an optimum value based upon experimental research. The Examiner should either find appropriate prior art for the purposes of rejection, or allow the claim.

E. **Claim 8.**

Claim 8 adds to claim 1 certain length and internal cross-sectional measurements. The Examiner rejects claim 8 using *In Re Boesch*, which does not apply in this case. Appellant in this case is positively reciting certain measurements, and has not discovered an optimum value based upon experimental research. The Examiner should either find appropriate prior art for the purposes of rejection, or allow the claim.

F. **Claims 9 and 10, wherein claim 10 stands or falls with claim 9.**

Claim 9 adds to claim 8 that the sleeve of pliable material is composed of a coextensive liner and overlay. Again, the Examiner claims that Davancens discloses an internal "liner," but (38) of Davancens is simply a hole.

G. **Claim 11.**

Claim 11 adds to claim 1 certain length and internal cross-sectional measurements. The Examiner rejects claim 11 using *In Re Boesch*, which does not apply in this case. Appellant in this case is positively reciting certain measurements, and has not discovered an optimum value based upon experimental research. The Examiner should either find appropriate prior art for the purposes of rejection, or allow the claim.

H. **Claims 12 and 13, wherein claim 13 stands or falls with claim 12.**

Claim 12 adds to claim 11 that the sleeve of pliable material is composed of a coextensive liner and overlay. Again, the Examiner claims that Davancens discloses an internal "liner," but (38) of Davancens is simply a hole.

I. **Claim 14.**

Claim 14 adds to claim 1 certain length and internal cross-sectional measurements. The Examiner rejects claim 14 using *In Re Boesch*, which does not apply in this case. Appellant in this case is positively reciting certain measurements, and has not discovered an optimum value based upon experimental research. The Examiner should either find appropriate prior art for the purposes of rejection, or allow the claim.

J. **Claim 15.**

Claim 15 adds to claim 1 certain length and internal cross-sectional measurements. The Examiner rejects claim 15 using *In Re Boesch*, which does not apply in this case. Appellant in this case is positively reciting certain measurements, and has not discovered an optimum value based upon experimental research. The Examiner should either find appropriate prior art for the purposes of rejection, or allow the claim.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: _____

John G. Posa

Reg. No. 37,424

Gifford, Krass, Groh, Sprinkle,

Anderson & Citkowski, P.C.

PO Box 7021

Troy, MI 48007-7021

(734) 913-9300

Date: Nov. 30, 2005

APPENDIX A**CLAIMS ON APPEAL**

1. For use with a spray bottle having a manually operated, elongated trigger-type grip, a cover for the grip, comprising:

a sleeve of pliable material having an open end, a closed end, an internal length, an internal cross-sectional dimension and a wall thickness; and wherein:

the length is on the order 2.5 cm or less;

the internal cross-sectional dimension is on the order of 1 cm or less; and

the wall thickness, including the closed end, is substantially consistent.

2. The cover of claim 1, wherein the internal cross section is circular.

3. The cover of claim 1, wherein the internal cross section is rectangular.

4. The cover of claim 1, wherein the sleeve of pliable material is composed of a coextensive liner and overlay.

5. The cover of claim 1, wherein the sleeve of pliable material has a durometer on the order of 25-100 SHORE A.

6. The cover of claim 1, wherein the sleeve of pliable material has a durometer on the order of 50 SHORE A.

7. The cover of claim 1, wherein:

the length measures from 1.35 to 1.4 cm; and

the internal cross section is circular with a diameter measuring 0.4 to 0.5 cm.

8. The cover of claim 1, wherein:

the length measures from 2.0 to 2.5 cm; and

the internal cross section is circular with a diameter measuring 0.35 to 0.4 cm.

9. The cover of claim 8, wherein the sleeve of pliable material is composed of a coextensive liner and overlay.

10. The cover of claim 9, wherein the sleeve has a combined wall thickness of 0.1 cm, or thereabouts.

11. The cover of claim 1, wherein:

the length measures approximately 2.0 cm; and

the internal cross section is circular with a diameter measures approximately 0.5 cm.

12. The cover of claim 11, wherein the sleeve of pliable material is composed of a coextensive liner and overlay.

13. The cover of claim 12, wherein the sleeve has a combined wall thickness of 0.1 cm, or thereabouts.

14. The cover of claim 1, wherein:

the length measures approximately 1.5 cm; and

the internal cross section is rectangular having internal cross-sectional dimensions of 0.1 by 0.5 cm, more or less.

15. (Original) The cover of claim 1, wherein:

the length measures approximately 1.25 cm; and

the internal cross section is rectangular having internal cross-sectional dimensions of 0.25 by 0.625 cm, more or less.

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APPENDIX B

EVIDENCE

None.

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APPENDIX C

RELATED PROCEEDINGS

None.